Supreme Court, U. S.
FILED
MAR 4 1977
MICHAEL RODAK, JR., CLERK

NO. _____

_____76-1232

IN THE

Supreme Court of the United States

C. E. CARTER, ET AL,
Petitioners

v.

HAMLIN HOSPITAL DISTRICT, ET AL,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE ELEVENTH SUPREME JUDICIAL DISTRICT OF TEXAS AT EASTLAND, TEXAS

BEVERLY TARPLEY
J. R. BLACK, JR.
Post Office Box 356
Abilene, Texas 79604
Counsel for Petitioners

Alpha Law Brief Co., One Main Plaza, No. 1 Main St., Houston, Texas 77002

SUBJECT INDEX

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented for Review	2
Constitutional Provision and Statutes Involved	3
Statement of the Case	3
Reasons for Granting the Writ	6
Conclusion	14
Certificate of Service	14
Exhibit A (Judgment of 104th District Court, dated February 5, 1976)	15
Exhibit B (Opinion of Court of Civil Appeals—Eastland, dated June 24, 1976)	17
Exhibit C (Opinion of Court of Civil Appeals denying rehearing, dated June 24, 1976)	27
Exhibit D (Application for Writ of Error, denied by the Supreme Court of Texas, dated December 1, 1976)	29
Exhibit E (Senate Bill No. 448 [Chapter 561 of Regular Session of 63rd Legislature of the State of Texas])	31
Exhibit F (Portion of map)	54
Exhibit G (Portion of Map)	55

LIST OF AUTHORITIES

CASES	Page
Avery v. Midland County, Texas et al (1968, 390 U.S. 474, 88 S.Ct. 1114, 20 L.Ed.2d 45)	10
City of Houston v. Standard-Triumph Motor Co., Inc., (Fifth Cir. 1965) 347 F.2d 194	7
Myles Salt Company v. Board of Commissioners, 239 U.S. 478, 36 S.Ct. 204, 60 L.Ed. 392 (1916)	9, 11, 12
Stamford Hospital District, et al v. B. J. Gist, et al, No. B-6412 pending in Supreme Court of Texas	13
Stamford Hospital District v. Billy Vinson, et al, 517 S.W.2d 358	13

CASES — Page

State of Texas ex rel. Pan American Production Company v. Texas City, 157 Tex. 450, 303 S.W.2d 780 (1957) appeal dismissed per curiam, 355 U.S. 603, 78 S.Ct. 533, 2 L.Ed.2d 523 ..... 11, 12

UNITED STATES CONSTITUTION

Amendment 14 ..... 2, 3

UNITED STATES STATUTES

28 U.S.C., Section 1257 (3) Rule 19(1)(a) 2

TEXTS

16A Corpus Juris Secundum:

p. 293 8
p. 296 8
p. 325 9
p. 581 8
p. 582 8

Vernon's Ann. Civ. St. 4494q 13

MISCELLANEOUS

Senate Bill No. 448, being Chapter 561 of the Regular Session of the 63rd Legislature of the State of Texas 3

NO. _____

IN THE

Supreme Court of the United States

C. E. CARTER, ET AL,
Petitioners

v.

HAMLIN HOSPITAL DISTRICT, ET AL,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE ELEVENTH SUPREME JUDICIAL DISTRICT OF TEXAS AT EASTLAND, TEXAS

C. E. Carter, Leon Kelso, Frank Carter, Henry Ueckert, Darwin Hill and Carl Jackson, hereby petition this Court for a Writ of Certiorari to review the judgment of the Court of Civil Appeals of Eastland, Texas entered in this cause on June 24, 1976.

OPINIONS BELOW

The District Court did not render an opinion except as reflected in its judgment which is not reported; a copy of said judgment is attached hereto as Exhibit A. The opinion of the Court of Civil Appeals is reported in

538 S.W.2d 671; a copy thereof is attached hereto as Exhibit B.

JURISDICTION

(a) Petitioners sought to have an act of the Texas Legislature declared void as contrary to the equal protection clause of the 14th Amendment to the United States Constitution. Additionally, Petitioners contend that the holding of the Court of Civil Appeals that said legislative action is not subject to judicial review is violative of the due process and equal protection clauses of the United States Constitution.

(b) The judgment sought to be reviewed was entered on June 24, 1976.

(c) Rehearing in the Court of Civil Appeals was denied on July 15, 1976, (Exhibit C). Application for writ of error was denied by the Supreme Court of Texas on the 1st day of December 1976, (Exhibit D). Petitioners' Motion for Rehearing was overruled on the 12th day of January, 1977, thus constituting the opinion of the Court of Civil Appeals a final judgment (as of January 12, 1977) of the highest Court of the State of Texas in which a decision in this case could be had, (Exhibit D).

(d) The statutory provision conferring jurisdiction on this Court is 28 U.S.C. 1257 (3). Rule 19(1)(a).

QUESTIONS PRESENTED FOR REVIEW

1. Whether or not the Court of Civil Appeals erred in holding that the Legislative enactment creating the Hamlin Hospital District is not subject to judicial review irrespective of whether said act was unreasonable, arbitrary, discriminatory, fraudulent, and passed purely for

the purpose of subjecting the property of Petitioners' to taxation without a reasonable basis contrary to the 14th Amendment of the United States Constitution.

2. Whether or not the Court of Civil Appeals erred in holding that whether said Legislative act is unreasonable and arbitrary and without reasonable basis or relation does not present a justiciable matter under the equal protection clause of the 14th Amendment.

3. Whether or not the Legislative Act creating the Hamlin Hospital District is void and contrary to the 14th Amendment of the United States Constitution because said act is arbitrary, unreasonable and discriminatory in authorizing the creation of the Hamlin Hospital District to arbitrarily include the Plaintiffs and their properties for the sole purpose of subjecting said properties to taxation knowing that the Plaintiffs could not benefit therefrom, did not have any need for said district and could not have an effective, equal weight voice or vote in the establishment of, or the operation of said district.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

1. The 14th Amendment to the Constitution of the United States.

2. Senate Bill No. 448, being Chapter 561 of the Regular Session of the 63rd Legislature of the State of Texas authorizing the creation of the Hamlin Hospital District. (Exhibit "E")

STATEMENT OF THE CASE

This suit was filed by Petitioners who are land owners living within the newly created boundaries of the Hamlin

Hospital District South of U. S. Highway No. 180, seeking to have said Legislative enactment creating said Hospital District declared void as contrary to the 14th Amendment of the Constitution of the United States, and for injunctive relief preventing the taxation of these Petitioners' properties. The taxable property in the portion of the district in which these Petitioners reside (south of Highway No. 180) amounts to thirty-five to forty percent of the total value of the taxable property within the Hospital District (Doc. 1, p. 71). The qualified voters living in the portion of the district in which Petitioners reside (south of U. S. Highway No. 180) were outnumbered 7 to 1 by the qualified voters living in the district north of U. S. Highway No. 180 (Doc. 1, p. 61). It is undisputed that Petitioners did not need or could not reasonably have expected to use the hospital facilities to be provided by the said Hospital District. There were other hospitals and medical facilities nearer to and which were being used by Petitioners. Petitioners did not use Hamlin as a trade area. The jury found that (1) the people residing south of U. S. 180 in the newly created hospital district used trade centers other than Hamlin as their principal trade center; (2) they used hospital and medical services other than the hospital and medical services in Hamlin, Texas; (3) they could not reasonably be expected to have used the hospital and medical services of proposed Hamlin Hospital District; and (4) they did not have any need for the creation of said hospital district or the services to be rendered by same. The map, (Doc. 14) shows the arbitrary nature of said Legislative enactment.

The Federal question sought to be reviewed was raised in several paragraphs of the initial pleading filed by

Petitioners commencing this suit. (Doc. 1, p. 2-17) Paragraph IV of said pleading reads as follows:

> "That said statutory enactment was pursuant to Article IX, Section 9 of the Texas Constitution and that said constitutional provision, statutory enactment, and elections held pursuant thereto are all unconstitutional, void and violate the equal protection clause of the United States Constitution and deny these plaintiffs equal protection of law as guaranteed by said 14th Amendment of the United States Constitution. These plaintiffs would show that they are rural residents living nearer to other cities and hospitals and trade areas which they are a part of and participants in and the city of Hamlin and any hospital established therein is foreign to their interest and would not be of any benefit to these plaintiffs. These plaintiffs would show that said hospital district was purposely established, created and set up with the intention of subjecting the property of these plaintiffs to taxation knowing that these plaintiffs would not benefit thereby and did not desire to be a part thereof and because of the method and manner in which said district was established said plaintiffs could not have an executive voice or vote in the establishment or operation of said district. That said hospital district was designedly created to give more weight to the votes of the residents of the City of Hamlin (owning property assessed at a lesser taxable value), and to dilute the votes of these plaintiffs (residents of rural areas owning property assessed at a greater taxable value). The manner in which said hospital district was set up creates invidious and discriminatory results rendering said statutory enactment (Exhibit "A") contrary to and violative of the equal protection clause of the United States Constitution. (Doc. 1, p. 3-4)

The jury answered all issues in favor of Petitioners. (Doc. 1, p. 38-43).

The trial court granted the motion of Defendants for judgment non obstante veredicto and denied Petitioners any relief (Doc. 1, p. 51; Exhibit A).

The federal question was urged in numerous points in the brief of Appellants filed in the Court of Civil Appeals (Doc. 4) and by assignments of error in Appellants Motion for Rehearing (Doc. 6). The federal question was also urged in the application for Writ of Error to the Supreme Court of Texas (Doc. 7) and in the Motion for Rehearing filed by Petitioners in the Supreme Court of Texas (Doc. 9). The opinion of the Court of Civil Appeals overruled these contentions holding that it was a legislative matter and not subject to judicial review (Exhibit B).

REASONS FOR GRANTING THE WRIT

The Petition should be granted so that this Court will stop the build-up of Texas decisions holding that legislative enactments (which are admittedly arbitrary, unreasonable, and discriminatory) are supreme and not subject to judicial review. The holding of the Texas courts in this cause (relying on a previous 5-4 Texas Supreme Court decision) that the act creating said hospital district is a legislative matter and not subject to judicial review is palpably wrong. This long, snake-like district was arbitrarily created purely for the purpose of subjecting the property of Petitioners to taxation to build a hospital for other people. The Texas Constitutional provision which provided for the creation of such district permitted the inclusion of portions of any number

of counties throughout the state without same being adjacent or contiguous which is arbitrary as a matter of law and the holding of the Court of Civil Appeals that such a legislative enactment pursuant thereto is a legislative matter and cannot be reviewed by the Courts is contrary to decisions of this Court and all basic concepts of Constitutional law.

Petitioners and their properties have been subjected to taxation by a legislative enactment which they believe is clearly unconstitutional. They have the right to present for judicial review the constitutionality of said act. A suit for declaratory judgment and injunction and injunction restraining the assessment and collection of said taxes is the proper manner to present to the Courts the question of the constitutionality of said legislative enactment. *City of Houston v. Standard-Triumph Motor Co., Inc.,* (Fifth Cir. 1965) 347 F.2d 194.

Petitioners have selected and followed the proper procedures for testing the constitutionality of this legislative enactment but have had the courthouse doors closed in their faces with the incorrect and palpably wrong holding that such legislative enactment is not subject to judicial review. This Court should correct the erroneous holdings of the courts below.

The Court of Civil Appeals ignored and refused to apply the following well-settled principles of constitutional law:

> "It has become a settled cannon of American jurisprudence that the final authority in determining whether or not the legislature, in enacting a statute, acted within its constitutional authority is vested in the judiciary, and that, in a proper case, it is

not only the right of the courts but also their duty to consider such a question, and to declare invalid an unconstitutional statute, and this obligation of the courts to act exists no matter how desirable or beneficial the attempted legislation may be, and notwithstanding any fiat of the legislature that the act is constitutional. If a statute is clearly invalid, it is the duty of the court so to determine, irrespective of the consequences." (16 C.J.S. p. 293)

"Equal protection to all is the basic principle on which rests justice under the law. By virtue of a clause in the Fourteenth Amendment of the Constitution of the United States expressly forbidding it to do so, a state may not deny to any person within its jurisdiction the equal protection of the laws." (16A C.J.S. p. 296)

"To satisfy the requirements of due process of law, the legislature must have power to act on the subject matter; the power must not be exercised in an unreasonable, arbitrary, capricious, or discriminatory manner; the act involved must have a legitimate end; the means selected must have a real, and must have, as well, a rational and reasonable, or substantial relation to the object sought to be attained; and the policy declared by the statute must have a real and substantial relation to such object . . ." (16A C.J.S. p. 581)

"The function of the courts in the application of the Fifth and Fourteenth Amendments is to determine in each case whether circumstances vindicate challenged regulation as a reasonable exertion of governmental authority or condemn it as arbitrary or discriminatory." (16A C.J.S. p. 582)

"Since a law does not violate the requirement of equal protection of laws merely because its operation is confined to areas having a designated population, counties, and other political subdivisions including municipal corporations, or school districts may be divided into classes based on population, *provided the classification is a natural one, bears a reasonable relation to the subject of the legislation, and is not arbitrary or capricious.*" (16A C.J.S. p. 325) (Emphasis ours)

The holdings of the courts below are contrary to the decision of this court in *Myles Salt Company v. Board of Commissioners,* 239 U.S. 478, 36 S.Ct. 204, 60 L.Ed. 392, (1916) wherein this court held as follows:

"The charge is that plaintiff's property *was included in the district not in the exercise of 'legal legislative discretion,'* not that the scheme of drainage would inure to the benefit of the property, even indirectly, but with the *predetermined 'purpose of deriving revenues to the end of granting a special benefit to the other lands* subject to be improved by drainage, without any benefit' to plaintiff 'or its property whatever' present or prospective."

"It is to be remembered that a drainage district has the special purpose of the improvement of particular property, and when it is so *formed to include property which is not and cannot be benefitted directly or indirectly, including it only that it may pay for the benefit to other property, there is an abuse of power and an act of confiscation.* Phillip Wagner v. Leser, supra. We are not dealing with motives alone, but as well with their resultant action; we are not dealing with disputable grounds of discretion or disputable degrees of benefit, but with an exercise of power determined by considerations not of the improvement of plaintiff's property, *but solely of the improvement of the property of other, —power, therefore, arbitrarily exerted,* imposing a

burden without a compensating advantage of any kind." (Pg. 396—Emphasis ours)

Petitioners not only did not have any voice in the political maneuvering in the passage of said legislative act, but also do not have any effective voice in the creation and operation of said hospital district. The arbitrary and unreasonable basis on which said district was set up gives the Hamlin people an eight-to-one margin in voting power but burdens the property of Petitioners with forty percent of the cost of operation of the district. The holdings of the Court below are contrary to the holding of this court in *Avery v. Midland County, Texas et al* (1968, 390 U.S. 474, 88 S.Ct. 1114, 20 L.Ed.2d 45) wherein this Court held as follows:

"The Equal Protection clause reaches the exercise of state power however manifested, whether exercised directly or through subdivisions of the State.

> 'Thus the prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action * * *.' Cooper v. Aaron, 358 J.S. 1, 17, 78 S.Ct. 1702, 1409, 3 L.Ed.2d 5 (1958).

"Although the forms and functions of local government and the relationships among the various units are matters of state concern, it is now beyond question that a State's political subdivisions must comply with the Fourteenth Amendment. The actions of local government *are* the actions of the State. A city, town, or county may no more deny the equal protection of the laws than it may abridge freedom of speech, establish an official religion, arrest without probable cause, or deny due process of law."

> "(7, 8) When the State apportions its legislature, it must have due regard for the Equal Protection Clause. Similarly, when the State delegates lawmaking power to local government and provides for the election of local officials from districts specified by statute, ordinance, or local charter, it must insure that those qualified to vote have the right to an equally effective voice in the election process." (Pages 1117, 1118) (88 S.Ct. 1114)

The Court of Civil Appeals, without going into the merits, held flatly that Petitioners are dealing with a legislative matter and have no right of judicial review. The Court relied on a previous decision of the Supreme Court of Texas in *State of Texas ex rel. Pan American Production Company v. Texas City,* 157 Tex. 450, 303 S.W.2d 780 (1957) appeal dismissed per curiam, 355 U.S. 603, 78 S.Ct. 533, 2 L.Ed.2d 523. We urge this Court to read that decision. It was a 5-4 decision with a strong, well-reasoned dissenting opinion which points out that the majority opinion is a flat holding contrary to the decision of this Court in *Myles Salt Company v. Board of Commissioners,* 239 U.S. 478, 36 Sup. Ct. 204, 60 L.Ed. 393. The dissenting opinion says:

> "The Myles Salt Company case holds that the inclusion of certain lands within the boundaries of a political subdivision of a state may constitute a deprivation of property without due process of law.
>
> Under this holding muncipal annexation proceedings which by Texas law necessarily operate to subject property to taxation cannot be removed beyond the scope of the Fourteenth Amendment by classifying them as being political in character."
>
> "Property is held subject to the general good, and if essential to muncipal needs, a city's action in

assuming authority or jurisdiction over such property cannot be gainsaid, although no direct benefit accrues to the owner of the property. When, however, property that will receive no benefits from the municipality, either immediate or reasonably prospective, which is wholly unrelated to the city's present or reasonably prospective economic or municipal needs is subjected to the jurisdiction of a city and its taxing powers by means of an annexation ordinance, then such action must be considered as unreasonable and arbitrary and hence invalid as constituting an unwarranted deprivation of property within the meaning of the Fourteenth Amendment to the federal Constitution." (303 S.W.2d 787)

The majority opinion says:

"(3) The constitutional inhibition against taking private property for public use without compensation has reference solely to the exercise of the right of eminent domain and not to taxation for public use. And although the latter may operate harshly or unjustly this fact affords no power to the court to interfere with the legislative process."
(303 S.W.2d 782)

The majority opinion in the *Texas City case* attempted to distinguish it from the *Myles Salt Company* case saying that in the *Texas City* case benefits will be received generally in the form of city governmental services. If that is a valid distinction it still would not apply to this cause as Petitioners will not receive any governmental services and this cause is more like the *Myles Salt Company* case.

It is not just the erroneous holding of the Court of Civil Appeals in this cause that needs to be rectified.

It is the progression of Texas cases eliminating any restraint on legislative action. Under the Texas Constitutional Provision (Section 9, Article IX), there is no restraint as it provides that the legislature can create hospital districts composed of "one or more counties or all of any part of one or more counties", not already in a hospital district. Said districts could arbitrarily include less populated portions of counties throughout Texas and without judicial review the persons and property victimized would have no relief. If this Court permits the taking away of the right of judicial review, then all restraint is gone. Legislative power unrestrained is abhorrent. This is not mere speculation by Petitioners. It has happened other than in this cause, by an act expanding an already existing hospital district with a bonded indebtedness. The clearly arbitrary nature of the legislative action in this cause is shown by superimposing on a portion of an ordinary 1977 highway map the Hamlin Hospital District north of Highway 180 (shaded) and south of Highway 180 (unshaded) (Exhibit F). An official map of said district is in the record. (Doc. 14) Pursuant to the same constitutional provision, an existing Stamford Hospital District was arbitrarily expanded as shown on Exhibit G, the shaded portion being the original district and the unshaded portion being the long strip included in the expanded district. (Vernon's Ann. Civ. St. 4494q; *Stamford Hospital District v. Billy Vinson, et al* 517 S.W.2d 358; also, application No. B-6412 pending in the Supreme Court of Texas, *Stamford Hospital District, et al v. B. J. Gist, et al*). Without judicial restraint, there is no end to the injustices that have and will be perpetrated by legislative action and political maneuvering. This Court should require the

Texas Courts to accept their constitutional responsibility to judicially review and declare void arbitrary legislative enactments repugnant to the United States Constitution.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

Counsel for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that copy of the above petition for writ of certiorari was served on Mr. John Watts, Willingham & Watts, Post Office Drawer O, Hamlin, Texas, 79520, and Honorable John L. Hill, Attorney General of Texas, Attention Harry C. Green, Assistant Attorney General, Post Office Box 12548, Capitol Station, Austin, Texas 78711, Attorneys of Record for Respondents by depositing same in the United States mails this the 2 day of ~~February~~ MARCH, 1977, in accordance with Rule 33(1).

EXHIBIT A

NO. 11,908

C. E. CARTER, et al

v.

HAMLIN HOSPITAL DISTRICT, ET AL

IN THE 104TH DISTRICT COURT

OF JONES COUNTY, TEXAS

JUDGMENT

The above entitled cause came on regularly for trial on January 5, 1976. Plaintiffs C. E. Carter, Leon Kelso, Frank Carter, Henry Ueckert, Darwin Hill and Carl Jackson appeared in person and by attorney. Defendants Hamlin Hospital District and its Board of Directors, John Scarborough, Chairman; John Brown, Jr., Bill Harbert, Donald Young, Joe Hudspeth, Joe Cowan and John C. Bryant, and the Attorney General of Texas, John L. Hill, appeared in person and by their attorneys. A jury of 12 persons was duly accepted, impaneled and sworn.

On January 6, 1976, after presentation of the testimony, evidence, and argument of counsel, both sides rested and Defendants moved for a directed verdict, which was denied by the Court and thereafter the jury returned a verdict in favor of Plaintiffs.

On January 29, after notice, Defendants presented written motions that judgment be entered in their favor,

notwithstanding the verdict. The Court, having heard and considered the motions, is of the opinion that judgment should be rendered in favor of Defendants as a matter of law.

It is therefore adjudged:

1. That all relief sought by Plaintiffs C. E. Carter, Leon Kelso, Frank Carter, Henry Ueckert, Darwin Hill and Carl Jackson, be and the same are hereby denied, and said Plaintiffs take nothing by this action against the Hamlin Hospital District and its Board of Directors, John Scarborough, Chairman; John Brown, Jr., Bill Harbert, Joe Hudspeth, Donald Young, Joe Cowan and John C. Bryan, and the Attorney General of Texas, John L. Hill;

2. That Defendants recover their costs of suit against Plaintiffs jointly and severally.

Signed this 5th day of February, 1976.

J. W. DANIEL
Judge Presiding

EXHIBIT B

C. E. CARTER, et al., Appellants,

v.

HAMLIN HOSPITAL DISTRICT et al., Appellees.

NO. 4932.

Court of Civil Appeals of Texas, Eastland.

June 24, 1976.

Rehearing Denied July 15, 1976.

Suit was brought for declaratory judgment that statute authorizing creation of hospital district violated equal protection clause of Fourteenth Amendment and to enjoin district from assessing or collecting any taxes on plaintiffs' property. The 104th District Court, Jones County, J. Neil Daniel, J., granted defendants' motion for judgment notwithstanding the verdict, and plaintiffs appealed. The Court of Civil Appeals, McCloud, C. J., held that plaintiffs' contention that statute was unreasonable and arbitrary because they were included within boundaries of district for purpose only of acquiring additional revenue and that they would receive no benefit from district did not present justiciable matter under

equal protection clause of Fourteenth Amendment, and that one-man, one-vote election scheme required by statute did not violate equal protection clause.

Affirmed.

Frank Scarborough, Scarborough, Black, Tarpley & Scarborough, Abilene, for appellants.

Jack G. Willingham & John S. Watts, Willingham & Watts, Hamlin, Harry C. Green, Asst. Atty. Gen., Austin, for appellees.

McCloud, Chief Justice.

Plaintiffs, C. E. Carter, Leon Kelso, Frank Carter, Henry Ueckert, Darwin Hill, and Carl Jackson, sued the Hamlin Hospital District, its Board of Directors, John Scarborough, John Brown, Jr., Joe Cowan, Bill Harbert, Donald Young, Joe Hudspeth, and John C. Bryant, and the Attorney General of Texas, seeking a declaratory judgment that Chapter 561, Acts of the 63rd Legislature of the State of Texas, Regular Session, 1973, which authorized the creation of the Hamlin Hospital District, violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Plaintiffs also sought a permanent injunction enjoining the Hamlin Hospital District from assessing or collecting any taxes on their property. Trial was to a jury. The court granted defendants' motion for judgment notwithstanding the verdict. Plaintiffs have appealed. We affirm.

Plaintiffs contend the Act violates the Equal Protection Clause in two respects:

> (1) The Act is unreasonable and arbitrary because plaintiffs were included within the boundaries of the district for the purpose only of acquiring additional revenue and plaintiffs will receive no benefit from the district; and
>
> (2) the plaintiffs were not given an "equal weight vote" in the establishment and operation of the district.

Plaintiffs' property is located south of U.S. Highway 180 in Jones County and they argue that there are seven times the number of qualified voters living in the district north of U. S. Highway 180, than there are qualified voters residing south of U. S. 180. They also contend that they, along with other individuals residing south of U. S. Highway 180, own between thirty-five to forty percent of the total value of the taxable property within the Hamlin Hospital District. The jury found that at the time of the passage of the Act authorizing the creation of the district (1) the people in the proposed district residing south of U. S. 180 used trade centers other than Hamlin as their principal trade center; (2) the people in the proposed district residing south of U. S. 180 used hospitals and medical services other than the hospitals and medical services in Hamlin; (3) it could reasonably be expected that the people who lived south of U. S. 180 would not use the hospital and medical services of the proposed Hamlin Hospital District; and, (4) the people residing south of U. S. 180 had no need for the creation of the hospital district or the services to be offered.

Article IX, Section 9 of the Texas Constitution authorizes the Legislature to provide for the creation, establishment, maintenance and operation of hospital districts "composed of one or more counties or all or any part of one or more counties . . ." Pursuant to this authority,

the 63rd Legislature enacted the Act in question which has been codified as an amendment to Article 4494q, Vernon's Ann. Civ. St.

The Act's provisions, in pertinent part, may be summarized as follows. Section 1 contains a metes and bounds description of the district. Section 3 provides that the district shall not be created nor any tax authorized, unless and until these matters are approved by a majority of the qualified electors residing within the district. The Act provides for a "one man-one vote" election scheme for all elections in the district, including the election to determine whether the district should be created, all bond elections, tax authorization elections, and elections of the district's board of directors. The Act charges the board of directors with the duty of providing medical facilities and services for the residents of the district, and Section 22 expressly states that in carrying out the purpose of the Act, the district will be performing an essential public function. The Act authorizes the board to levy general ad valorem taxes and to issue bonds, upon approval of a majority of the qualified electors residing within the district.

On December 18, 1973, the qualified electors within the proposed district voted to create the Hamlin Hospital District. On August 24, 1974, the qualified electors voted to authorize the board of directors to issue bonds, and to levy, assess, and collect ad valorem taxes on all taxable property within the district.

Defendants argue the court properly entered judgment notwithstanding the verdict because the determination of the boundaries in the instant case is a "political question" solely within the power, prerogative and discretion of the Legislature and is not justiciable under the Equal Protection Clause of the Fourteenth Amendment. We agree.

The principle that the determination of territorial boundaries is ordinarily a political function, not subject to judicial review, was announced by the United States Supreme Court in the early case of *Hunter v. City of Pittsburgh,* 207 U.S. 161, 28 S.Ct. 40, 52 L.Ed. 151 (1907). There, the City of Allegheny was consolidated with the City of Pittsburgh pursuant to a state statute which permitted consolidation upon an affirmative vote of a majority of the voters residing in both municipal corporations. A majority of the electors residing in Allegheny voted against consolidation. The court said:

> "Munipical corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. . . .
> The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State.
>
> The State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation . . . In all these respects the State is Supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and

> property owners may by such changes suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason . . . The power is in the State and those who legislate for the State are alone responsible for any unjust or oppressive exercise of it."

Some of the broad language contained in *Hunter* has been limited by subsequent cases, and the nonjusticiable "political question" insulation has been significantly penetrated. *Gomillion v. Lightfoot,* 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110; *Baker v. Carr,* 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663; *Reynolds v. Sims,* 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506. However, the principle announced regarding judicial review in *Hunter* appears to be viable in cases such as the one under consideration.

In *Hammonds v. City of Corpus Christi, Texas,* 343 F.2d 162 (5th Cir. 1965), cert. denied, 382 U.S. 837, 86 S.Ct. 85, 15 L.Ed.2d 80 (1965), the court followed *Hunter* and affirmed the dismissal of a suit by property owners who were contending that the annexation of their propery was arbitrary and denied them equal protection of the law.

In *Detroit Edison Company v. East China Township School District No. 3,* 378 F.2d 225 (6th Cir. 1967), cert. denied, 389 U.S. 932, 88 S.Ct. 296, 19 L.Ed.2d 284 (1967), the court distinguished the voting rights cases as follows:

> "Two other Circuits, the Fifth and Tenth, have had occasion to pass on cases where the constitutionality of a state annexation procedure was raised. As the

District Court noted, both Courts of Appeals relied on *Hunter v. City of Pittsburg* in affirming dismissals of their respective cases. In *Hammonds v. City of Corpus Christi,* 343 F.2d 162 (5th Cir.), cert. denied, 382 U.S. 837, 86 S.Ct. 85, 15 L.Ed.2d 80 (1965), the court found no error in the District Court's decision which dismissed the complaint on the ground, among others, that 'the annexation of lands to a city has been held without exception to be purely a political matter, entirely within the power of the State Legislature to regulate'. And in *International Harvester Co. v. Kansas City,* 308 F.2d 35 (10th Cir. 1962), cert. denied, 371 U.S. 948, 83 S.Ct. 503, 9 L.Ed.2d 498 (1963) after quoting from *Hunter,* stated:

> 'Neither the due process clause nor the concept of equal protection is available to persons seeking to obstruct the ordinary and necessary exercise of a state's political functions. * * *'

With respect to the annexation issue, plaintiffs' reliance on the relatively recent apportionment cases is misplaced. The Court in *Reynolds v. Sims,* 377 U.S. 533, 554, 84 S.Ct. 1362, 1378, 12 L.Ed.2d 506 (1954), for example, recognized that 'all qualified voters have a constitutionally protected right to vote' (referring of course to the right to vote for a 'candidate of one's choice' in a 'representative government' system), and thus the court, relying on the equal protection concept, limited the states' power to disregard population in defining political boundaries for election purposes. However, as the District Court noted, the reapportionment cases 'create no constitutional rights in affected citizens concerning the *procedure* for creating or altering' any type of state district. The judgment of the District Court with respect to the annexation issue will hereinafter be affirmed; reference is made to the well reasoned

opinion of District Judge Theodore Levin reported at 247 F.Supp. 296, wherein the cases of *Gomillion v. Lightfoot*, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960) and *Carrington v. Rash*, 380 U.S. 89, 85 S.Ct. 775, 13 L.Ed.2d 675 (1965) are shown to be inapposite."

The Texas Supreme Court in *State of Texas ex rel. Pan American Production Co. v. Texas City*, 157 Tex. 450, 303 S.W.2d 780 (1957), appeal dismissed per curiam, 355 U.S. 603, 78 S.Ct. 533, 2 L.Ed.2d 523, held that the determination of property to be included in an annexation ordinance was a legislative matter, and not subject to judicial review. There the ordinance included submerged lands on which Pan American Production Company owned oil and gas leasehold estates. The court said:

" . . . But at any rate the conclusion of the petitioners here that the annexation ordinance was unreasonable and arbitrary is only to say that it was unreasonable and arbitrary because the land was not suitable, and had no relation to the City's needs, and it was for the purpose only of acquiring additional revenue and could afford no benefit to the owners of the property annexed. The decisions of this State have repeatedly held that such facts do not warant intervention or review by the courts . . ."

In distinguishing *Myles Salt Co. v. Board of Commissioners*, 239 U.S. 478, 36 S.Ct. 204, 60 L.Ed. 392, the court observed:

"A valid distinction is to be made, however, between a special tax or assessment to finance special

improvements designed to benefit property or persons located within the particular taxing district, and on the other hand an ad valorem tax on all property within the taxing jurisdiction of the general welfare of the entire community. Benefits may be intangible and incapable of exact ascertainment, but it is constitutionally sufficient if taxes are uniform and are for public purposes in which the City has an interest. *Morton Salt Co. v. City of Hutchinson*, 10 Cir., 177 F.2d 889 . . ."

See also: *People v. City of Palm Springs*, 51 Cal.2d 38, 331 P.2d 4 (1958); *Winship v. City of Corpus Christi*, 373 S.W.2d 844 (Tex. Civ. App.—Corpus Christi 1963, writ ref. n.r.e.), appeal dismissed per curiam, 379 U.S. 646, 85 S.Ct. 611, 13 L.Ed.2d 551.

The court in *Norris v. City of Waco*, 57 Tex. 635 (1882) stated:

"To hold that each person must receive the same benefit as another may from the expenditure of money raised by taxation would be to hold that the law required an impossibility, for, in the very nature of things, some persons will derive greater pecuniary benefit from the expenditure of money for strictly public purposes than will others. In fact, some may receive no benefit whatever, save such as results to them from the preservation of order, protection to property, and the general prosperity which results therefrom, while others may and will be directly benefited by the increased value of their property and increase to their business which results from the expenditure of money raised by taxation, for purposes in every respect strictly public."

[1] Plaintiffs' contention that the Act is unreasonable and arbitrary because they were included within

the boundaries of the district for the purpose only of acquiring additional revenue and that they would receive no benefit from the district, does not present a justiciable matter under the Equal Protection Clause of the Fourteenth Amendment.

[2] We also hold that the "one man-one vote" election scheme required by the Act does not violate the Equal Protection Clause. *City of Phoenix v. Kolodziejski,* 399 U.S. 204, 90 S.Ct. 1990, 26 L.Ed.2d 523 (1970); *Stewart v. Parish School of Parish of St. Charles,* 310 F.Supp. 1172 (E.D. La. 1970), aff'd mem., 400 U.S. 884, 91 S.Ct. 136, 27 L.Ed.2d 129 (1970).

We have considered all of plaintiffs' points and they are all overruled. The judgment of the trial court is affirmed.

EXHIBIT C

NO. 4932

C. E. CARTER, et al

v.

HAMLIN HOSPITAL DISTRICT, et al

From the 104th District Court
of Jones County

June 24, 1976

Opinion by McCloud, C.J.

This cause came on to be heard on the transcript of the record and the same being inspected, it is the opinion of the Court that there was no error in the judgment. It is therefore ordered, adjudged and decreed that the judgment of the trial court be, and the same is hereby, in all things affirmed. It is further ordered that all costs incurred by reason of this appeal be, and the same are hereby, taxed against appellants, C. E. Carter, Leon Kelso, Frank Carter, Henry Ueckert, Darwin Hill and Carl Jackson, for which let execution issue, and that this decision be certified below for observance.

NO. 4932

C. E. CARTER, et al

v.

HAMLIN HOSPITAL DISTRICT, et al

July 15, 1976

This day came on to be heard Appellant's motion for rehearing and the same, having been duly considered, is hereby overruled.

EXHIBIT D

IN THE
SUPREME COURT OF TEXAS

B-6234

C. E. CARTER ET AL.

v.

HAMLIN HOSPITAL DISTRICT ET AL.

From Jones County
Eleventh District

December 1, 1976

Application of petitioners for writ of error to the Court of Civil Appeals for the Eleventh Supreme Judicial District having been duly considered, and the Court having determined that the application presents no error requiring reversal of the judgment of the Court of Civil Appeals, it is ordered that said Application be, and hereby is, refused.

It is further ordered that applicants, C. E. Carter et al., pay all costs incurred on this application.

B-6234

C. E. CARTER ET AL.

v.

HAMLIN HOSPITAL DISTRICT ET AL.

From Jones County,
Eleventh District.

Petitioners' motion for rehearing of application for writ of error having been duly considered, it is ordered that said motion be, and hereby, is overruled.

I GARSON R. JACKSON, Clerk of the Supreme Court of Texas, do hereby certify that the above and foregoing is a true and correct copy of the orders of the Supreme Court of Texas in the case numbered and styled as above, as the same appears of record in the minutes of said Court under the dates shown.

WITNESS my hand and seal of the Supreme Court of Texas, at the City of Austin, this, the 12th day of January, 1977.

GARSON R. JACKSON, Clerk

By: MARY M. WAKEFIELD
Mary M. Wakefield, Deputy

EXHIBIT E

HAMLIN HOSPITAL DISTRICT
CHAPTER 561[52]

S. B. NO. 448

An Act relating to the creation of the Hamlin Hospital District of Jones County, Texas under Article IX, Section 9, Constitution of Texas, as amended; prescribing a procedure for an election on the creation of such district and the levy of a tax for its maintenance, support and payment of indebtedness; providing that the district take over and assume the responsibilities and liabilities of any publicly owned hospital within the district; providing the rights, powers and duties of the district and its governing body and procedures for governing said district and administering, operating and financing the hospital system; providing procedures for the issuance of bonds, the characteristics of such bonds, and their eligibilty for investments and security for deposit of public funds; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. Pursuant to the authority granted by the provision of Article IV, Section 9, of the Texas Constitution, the Hamlin Hospital District, hereinafter referred to as district, is hereby authorized to be created and established so as to be composed of all the territory and property in Jones County included within the following boundaries:

Beginning at a point on the North line of Jones County at its intersection with the East line of Section 87, BBB

---

52. Vernon's Ann. Civ. St. art. 4494q note.

&C RR Co. lands, said point being also on the boundary of the Stamford Hospital District;

Thence South with the East lines of Sections 87, 88, 89, 90, 91, BBB&C RR Co. lands to the SE corner of Section 91, the NE corner of Section 92, same lands;

Thence West with the South lines of Sections 91 and 102 to the midpoint of the South line of Section 102, same lands;

Thence South across Section 101 and 100 to the mid-point of the South line Section 100, same lands;

Thence West with the South line of Section 100 to the Southwest corner of said Section 100;

Thence South with the West line of Section 99, same lands and the West lines of Sections 7 and 8, GH & H RR Co. survey to a point in the East line of the McMullen and McGloin League 336;

Thence S 15 deg. E with the East line of League 336 to its SE corner;

Thence S 75 deg. W with the South line of League 336 to the NE corner of Sub-division 12 of the L. Kratz League 335;

Thence S 15 deg. E with the East lines of Subdivisions 12, 17 and 26, League 335 to a point in the North line of the Harrison County School Lands League 334;

Thence S 75 deg. W with the North line of League 334 to the NE corner of Sub-division 30, League 334;

Thence S 15 deg. E with the East lines of Subdivisions 30 and 43 to the mid-point of said League 334;

Thence S 75 deg. W to the mid-point of the West line of said League 334;

Thence S 15 deg. E with the West lines of League 334 and 333 Harrison County School Lands to the SW corner of League 333 on the North line of Section 44, S.P. RR Co. Block 2;

Thence S 75 deg. W with the North line of said Sec. 44 to its NW corner;

Thence South with the West lines of Sections 44 and 43, S. P. RR to the SW corner of said Section 43 on the North line of the S. Redman pre-emption Survey;

Thence N 75 deg. E to the NE corner of said Redman Survey;

Thence S 15 deg. E with the East lines of the S. Redman and W. S. Coulson Survey 212 to the NE corner of the M. Northington Survey 270 on the Clear Fork of the Brazos River;

Thence down the river with its meanders and with the East line of the M. Northington Survey 270 and the North lines of the J. M. Cloud Survey 269, J. C. Hunt Survey 268, the M. Fragosa Survey 267, the S. Jones Survey 266 and the A. B. Jones Survey 265 to the NE corner of Survey 265;

Thence S 15 deg. E with the East line of Section 265 to its SE corner on the North line of Section 9, Blk. 17 T&P RR Co.;

Thence S 75 deg. W with the North line of Section 9 to its NW corner;

Thence S 13 deg. E with the East lines of Sections 8, 13, 16 same lands and crossing Section 22, same lands

to a point in the North line of the G. A. Kirkland Survey 2;

Thence N 75 deg. E with the North line of said Survey 2 to the NE corner of Subdivision 63;

Thence S 15 deg. E with the East line of Subdivision 63 to a point in the North line of Dewitt County School Lands League 126;

Thence N 77 deg. E with the North line of League 126 to its NE corner;

Thence S 13 deg. E with the East line of League 126 and Section 23, Blk. 17, T&P RR to a point in the South line of Jones County;

Thence West with South County line of Jones County across Blk. 17, T&P RR Co. Dewitt County School Lands Leagues 125 and 149, Blks. 18, 19, T&P RR Co. to the SW corner of Jones County, the SE corner of Fisher County;

Thence North with the West county line of Jones County across the R. S. Spiers Survey 283, E. Miles Survey 219, J.S. Hail Survey 2, Goliad County School Land Leagues 360, 359 and 358, J. Rodriguez Survey 357, I. De La Garza Survey 356, Austin & Williams Survey 355 and 354, BBB&C RR Co. Blk. 1, Section 181, 182 and 183, and others to the NW corner of Jones County and the NE corner of Fisher County;

Thence East with the North county line of Jones County across the W. E. Kaye Survey and Sections 171, 158, 152, 139, 134, 121, 115, 106 and 87, BBB&C RR Co. lands to the place of beginning.

Sec. 2. The district herein authorized to be created shall have the rights, powers, and duties as are conferred

by this Act or general laws relating to all hospital districts, but in case of conflict the provisions of this Act shall control. The district shall take over, and there shall be transferred to it any land, buildings, improvements, and equipment constituting a hospital which is located wholly within the district, and is or may be jointly or separately owned by any city, town, or county. The district shall have full title to all such properties, real, personal, mixed, concrete, or abstract, and provide for the establishment of a hospital system by the purchase, construction, acquisition, repair, or renovation of buildings and equipment, and equipping same, and the administration thereof for hospital purposes. The district shall assume all outstanding indebtedness incurred for hospital purposes prior to the creation of the district by any city or town located wholly within its boundaries and, a pro rata portion of indebtedness incurred for hospital purposes, based upon the then last approved tax assessment roll of the included cities, towns, and counties, as shown on the county tax roll, incurred by any city or town, if less than all of the territory of a city or town is included within the district's boundaries and incurred by the county or counties the territory of which is included in the district's boundaries.

Sec. 3. The district shall not be created nor shall any tax therein be authorized unless and until such creation and such tax are approved by a majority of the qualified property taxpaying electors of the area of the proposed district voting at an election called for such purpose. Such election shall be called by a majority of the temporary directors of the district and shall be held not less than 35 days from the time such election is ordered. The election order may provide that the entire district

shall constitute one election precinct or county election precincts may be combined for the election. The order calling the election shall specify the time and places of holding same, the form of ballot, and the presiding judge for each voting place. Notice of election shall be given by publishing a substantial copy of the election order in a newspaper of general circulation in the area of the proposed district, once a week for two consecutive weeks, the first publication to appear at least 14 days prior to the date set for the election. The failure of any such election shall not operate to prohibit the calling and holding of subsequent elections for the same purpose; provided, however, if the district herein authorized to be created is not confirmed within five years from the date of the first election for confirmation, this Act is repealed. At the election, there shall be submitted to the qualified property taxpaying electors of the proposed district the proposition of whether the district shall be created with authority to levy annual taxes at a rate not to exceed 75 cents on the $100 valuation of all taxable property within such district for the purpose of meeting the requirements of the district's indebtedness, and its maintenance and operating expenses. A majority of the qualified property taxpaying electors of the district voting at the election in favor of the proposition shall be sufficient for its adoption and the creation of the district.

Sec. 4. (a) Upon the effective date of this Act, the following named persons shall be and constitute the temporary directors of said district: J. C. Turner, John Scarborough, W. T. Johnson, Jack G. Willingham, Bill Harbert, Joe Hudspeth, John C. Bryant and each of said directors shall subscribe to the constitutional oath of office within 90 days of the effective date of this Act.

Should any of the named directors refuse to act or for any reason fail to qualify as herein required, the remaining board members herein appointed, who have qualified, shall fill such vacancy. However, if less than four of the board members appointed fail to qualify as herein required, the governor shall fill such vacancies. The terms of office of the first four named directors shall expire on the first Tuesday in April, 1975, and the terms of the last three named directors shall expire on the first Tuesday in April in 1974. A regular election for directors shall be held on the first Tuesday in April in each year beginning in 1974, and directors shall be elected at that time and in each succeeding year. The regular election for directors shall be ordered by the board and such order shall state the time, place, and purpose of the election; and the board shall appoint the presiding judge who shall appoint an assistant judge and such clerks as may be required; and such election shall be ordered at least 15 days prior to the date on which the election is to be held. Any person desiring his name to be printed on the ballot as a candidate for director shall file a petition, signed by not less than 10 qualified voters asking that such name be printed on the ballot, with the secretary of the board of directors of the district. Such petition shall be filed with such secretary at least 25 days prior to the date of election. Notice of the election shall be published one time in a newspaper of general circulation in the area of the district at least five days before the election. All vacancies in office other than for the failure of four or more of the original directors herein appointed to qualify shall be filled by a majority vote of the remaining directors and such appointees shall hold office for the unexpired term for which they were appointed.

(b) No director shall be entitled to compensation, but shall be entitled to receive his actual expenses incurred in attending to the district's business, provided such expenses are approved by the remainder of the board. Any person who is a resident property-owning taxpaying voter of the district shall be eligible to hold office as director of the district. The board of directors shall elect from its number a president, vice-president, secretary, and such other officers as in the judgment of the board are necessary. The president shall be the chief executive officer of the district and shall have the same right to vote as any other director. The vice-president shall perform all duties and exercise all powers conferred by this Act upon the president when the president is absent or fails and declines to act.

(c) The directors named herein and their successors in office shall hold office as temporary directors until such time as the creation of the district has been approved at an election as herein provided. At such time as the creation of the district is so approved and the returns of the election officially canvassed, the persons acting as temporary directors shall become permanent directors whose terms shall expire as hereinabove provided. Each permanent director, and their successors in office, shall qualify by executing the constitutional oath of office.

Sec. 5. The board of directors shall manage, control, and administer the hospital system and all funds and resources of the district, but in no event shall any operating, depreciation, or building fund reserves be invested in any funds or securities other than those specified in Article 836 or 837, Revised Civil Statutes of Texas, 1925, as amended. The district, through its board of di-

rectors, shall have the power and authority to sue and be sued, to promulgate rules and regulations governing the operation of the hospital, hospital system, its staff, and its employees. The board of directors shall appoint a qualified person to be known as the administrator or manager of the hospital district and may in its discretion appoint an assistant to the administrator or manager. The administrator or manager and assistant administrator or manager, if any, shall serve at the will of the board and shall receive such compensation as may be fixed by the board. The administrator or manager shall, upon assuming his duties, execute a bond payable to the hospital district in an amount to be set by the board of directors, in no event less than $5,000 conditioned that he shall perform the duties required of him, and containing such other conditions as the board may require. The administrator or manager shall supervise all the work and activities of the district and shall have general direction of the affairs of the district, subject to the limitations as may be prescribed by the board. The board of directors shall have the authority to appoint to the staff such doctors as it may be deemed necessary for the efficient operation of the district, and may provide for temporary appointments to the staff if warranted by circumstances. The board may delegate to the administrator or manager the authority to employ technicians, nurses, and employees of the district. The board shall be authorized to contract with any other political subdivision or governmental agency whereby the district will provide investigatory or other services as to the medical, hospital, or welfare needs of the inhabitants of the district and shall be authorized to contract with any county or incorporated municipality located outside its boundaries

for the care and treatment of the sick, diseased, or injured persons of any such county or municipality, and shall have the authority to contract with the State of Texas or agencies of the federal government for the treatment of sick, diseased, or injured persons.

Sec. 6. (a) The district shall be operated on the basis of a fiscal year as established from time to time by the board of directors of the district, provided such fiscal year shall not be changed more often than once in any 24-month period. The board shall cause an independent audit to be made of the financial condition of the district, which, together with other records of the district, shall be open to inspection at the principal office of the district, such audit to be made covering such fiscal year, and the same shall be filed at the office of the district as soon as it is completed. The administrator or manager shall prepare an annual budget for approval by the board of directors. The budget shall also contain a complete financial statement of the district showing all outstanding obligations of the district, the cash on hand to the credit of each and every fund of the district, the funds received from all sources during the previous year, the funds available from all sources during the ensuing year, with balances expected at year end of the year in which the budget is being prepared, and estimated revenues and balances available to cover the proposed budget and the estimated tax rate which will be required, and the proposed expenditures and disbursements and the estimated receipts and collections for the following fiscal year. A public hearing on the annual budget shall be held by the board of directors after notice of such hearing has been published one time at least 10 days before the date set therefor. Notice of the

budget hearing shall be published in a newspaper or newspapers which individually or collectively provide general circulation in the hospital district. Any resident of the district shall have the right to be present and participate in the hearing within such rules of decorum and procedures as may be prescribed by the board. At the conclusion of the hearing, the budget, as proposed by the administrator, shall be acted upon by the board of directors, and as modified or approved, such budget shall become final.

(b) The board of directors shall have authority to make changes in the budget as in their judgment and the law warrants and the interest of the taxpayers demands. The annual budget may be amended as the circumstances require but the budget and amendments shall be approved by the board of directors. As soon as practicable after the close of each fiscal year, the administrator or manager shall prepare for the board a full sworn statement of all moneys belonging to the district and a full account of the disbursement of same.

Sec. 7. The board of directors shall have the power and authority to issue and sell bonds in the name and upon the faith and credit of the district for the purchase, construction, acquisition, repair, or renovation of buildings and improvements and equipping the same for hospital purposes, and for any or all of such purposes. At the time of the issuance of any bonds, except revenue bonds issued under Section 8(b) of this Act, a tax shall be levied by the board sufficient to create an interest and sinking fund to pay the interest on the principal of as same matures, providing such tax together with any other taxes levied for said district shall not exceed the rate of

tax voted under the provisions of Section 3 of this Act. Except as provided in Section 8, no bonds shall be issued by or on behalf of such hospital district until authorized by a majority of the qualified electors of the district who own taxable property therein and who have duly rendered the same for taxation voting at an election called for such purpose. The order for bond election shall specify the date of the election, the amount of bonds to be authorized, the maximum maturity thereof, the maximum rate of interest they are to bear, the place or places where the election shall be held, the presiding judge and alternate judge for each voting place, and provide for clerks as in county elections. Notice of any bond election shall be published as provided in Article 704, Revised Civil Statutes of Texas, 1925, as amended, and shall be conducted in accordance with the general laws of Texas pertaining to general elections, except as modified by the provisions of this Act, provided, however, an election to authorize the issuance of bonds may be held at the same time as the election for which provision is made in Section 3, and in such event notice of the bond election may be given in the manner provided in Section 3 of this Act.

Sec. 8. (a) Refunding bonds may be issued by the board of directors for the purpose of refunding and paying off any outstanding indebtedness it has issued or assumed. Such refunding bonds may be sold and the proceeds thereof applied to the payment of outstanding indebedness, or may be exchanged in whole or in part for not less than a like principal amount of such outstanding indebtedness. If such refunding bonds are to be sold and the proceeds thereof applied to the payment of any such outstanding indebtedness, same shall

be issued and payments made in the manner specified by Chapter 503, Acts of the 54th Legislature, 1955, as amended (Article 717k, Vernon's Texas Civil Statutes). Refunding bonds shall not bear interest in excess of the rate permitted by Chapter 784, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717k—3, Vernon's Texas Civil Statutes).

(b) In addition to the power to issue bonds payable from taxes levied by the district, as contemplated by the preceeding section, said board is further authorized to issue and to refund any previously issued revenue bonds for purchasing, constructing, acquiring, repairing, equipping, or renovating buildings and improvements for hospital purposes, and for acquiring sites therefor, such bonds to be payable from and secured by a pledge of all or any part of the revenues of the district to be derived from the operation of its hospital or hospitals, and such bonds may be additionally secured by a mortgage or deed of trust lien on any part or all of its properties. Such bonds shall be issued in the manner and in accordance with the procedures and requirements specified for the issuance of revenue bonds by county hospital authorities in Sections 8, 10, 11, 12 and 13, Chapter 122, Acts of the 58th Legislature, 1963 (Article 4494r, Vernon's Texas Civil Statutes).

Sec. 9. Bonds of the district shall mature within 40 years of their date and may bear interest at a rate or rates not to exceed that prescribed by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717k—2, Vernon's Texas Civil Statutes). Bonds shall be executed in the name of the hospital district and in its behalf by the president of the board and countersigned by the secretary of the board in the

manner provided by Chapter 204, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 717j—1, Vernon's Texas Civil Statutes), and shall be subject to the same requirements in the matter of approval by the Attorney General of Texas and registration by the Comptroller of Public Accounts of the State of Texas as are by law provided for approval and registration of bonds issued by counties. Upon the approval of such bonds by the attorney general and registration by the comptroller, the same shall be incontestable for any cause.

Sec. 10. (a) The board of directors is hereby given complete discretion as to the type of employees and buildings, both as to number and location, and equipment required to establish and maintain an adequate hospital system. The hospital system may include facilities for domiciliary care of the sick, wounded, and injured, facilities for outpatient clinic or clinics, dispensaries, facilities for geriatric domiciliary care, convalescent home facilities, necessary nurses' domiciliaries and training centers, blood banks, and research centers or laboratories as well as ambulance and other facilities or services deemed necessary for hospital care by the directors.

(b) The district, through its board of directors, is authorized to enter into an operating or management contract with respect to the hospital facilities of the district or a part thereof, or may lease all or part of the buildings and facilities upon terms and conditions considered to be to the best interest of its inhabitants, provided that in no event shall any lease be for a period in excess of 25 years from the date entered. The district shall be empowered to sell or otherwise dispose of any property or equipment of any nature upon terms and

conditions found by the board to be in the best interest of its inhabitants; provided, however, that in no event shall the board be authorized to sell or dispose of any real property unless the board affirmatively finds that the same is not needed for the operation of the hospital system.

Sec. 11. The board of directors of the district shall have the power to prescribe the method and manner of making purchases and expenditures by and for the hospital district, and shall also be authorized to prescribe all accounting and control procedures. All contracts for construction involving the expenditure of more than $2,000 may be made only after advertising in the manner provided by Chapter 163, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 2368a, Vernon's Texas Civil Statutes). The provisions of Article 5160, Revised Civil Statutes of Texas, 1925, as amended, relating to performance and payment bonds shall apply to construction contracts let by the district. The district may acquire equipment for use in its hospital system and mortgage or pledge the property so acquired as security for the payment of the purchase price, but any such contract shall provide for the entire obligation of the district to be retired within five years from the date of the contract. Except as permitted in the preceding sentence and as permitted by Sections 7 and 8 of this Act, the board may not incur any obligation payable from any revenues of the district, taxes or otherwise, except from funds on hand or to be on hand within the then current and following fiscal year of the district.

Sec. 12. The board of directors of the district shall name one or more banks within or without its boundaries to serve as depository for the funds of the district. All

funds of the district, except those invested as provided in Section 5 of this Act, and those transmitted to a bank or banks of payment for bonds or obligations issued or assumed by the district shall be deposited as received with the depository bank and shall remain on deposit, provided that nothing herein shall limit the power of the board to place a portion of such funds on time deposit or purchase certificates of deposit.

Sec. 13. The board of directors shall annually levy a tax of not to exceed the amount hereinabove permitted for the purpose of:

(1) paying the interest on and creating a sinking fund for bonds and other obligations which may be issued or assumed by the hospital district for hospital purposes as herein provided;

(2) providing for the operation and maintenance of the hospital district and hospital system, based upon the final budget; and

(3) making further improvements and additions to the hospital system, and the acquisition of necessary sites therefor by purchase, lease, or condemnation.

In setting such tax rate the board shall take into consideration the income of the district from sources other than taxation. Upon determination of the amount of tax required to be levied, the board shall make such levy and certify the same to the tax assessor-collector of said district.

Sec. 14. All bonds issued hereunder and indebtedness assumed by the district shall be and are hereby declared to be legal and authorized investments of banks, savings banks, trust companies, building and loan associations,

savings and loan associations, insurance companies, trustees, and sinking funds of cities, towns, villages, counties, school districts, or other political subdivisions of the State of Texas, and for all public funds of the State of Texas or its agencies including the state permanent school fund. Such bonds and indebtedness shall be eligible to secure deposit of public funds of the State of Texas and public funds of cities, towns, villages, counties, school districts, or other political subdivisions or corporations of the State of Texas, and shall be lawful and sufficient security for said deposits to the extent of their value when accompanied by all unmatured coupons appurtenant thereto.

Sec. 15. The district shall have the right and power of eminent domain for the purpose of acquiring by condemnation any and all property of any kind and character in fee simple, or any lesser interest therein, within the boundaries of the district necessary to the powers, rights, and privileges conferred by this Act, in the manner provided by the general law with respect to condemnation by counties, provided that the district shall not be required to make deposits in the registry of the trial court of the sum required by Paragraph 2 of Article 3268, Revised Civil Statutes of Texas, 1925, as amended, or to make bond as therein provided. In condemnation proceedings being prosecuted by the district, the district shall not be required to pay in advance or give bond or other security for costs in the trial court, nor to give any bond otherwise required for the issuance of a temporary restraining order or a temporary injunction or to give bonds for costs or for supersedeas or any appeal or writ of error.

Sec. 16. The directors shall have the authority to levy taxes for the entire year in which the district is established as the result of the election herein provided. All taxes of the district shall be assessed and collected by the assessor and collector appointed by the directors, who shall also fix the terms of his employment, compensation, and requirement for bond to assure the faithful performance of his duties, but in no event shall such bond be for less than $5,000. The directors shall also annually appoint five persons to serve as a board of equalization and shall fix their compensation. Each member of the board and the tax assessor and collector shall be residents of the district and each shall have the same duties including the obligation to execute the oath of office as required by county officials exercising such powers and duties. Except as in this law provided to the contrary, all the provisions of Title 122, Revised Civil Statutes of Texas, 1925, as amended, shall apply to the district.

Sec. 17. The board of directors may employ fiscal agents, accountants, architects, and attorneys as it may consider proper.

Sec. 18. Whenever a patient residing within the district has been admitted to the facilities thereof, the administrator or manager may cause inquiry to be made as to his circumstances and those of the relatives of such patient legally liable for his support. If he finds that such patient or said relatives are able to pay for his care and treatment in whole or in part, an order shall be made directing such patient or said relatives to pay the hospital district for the care and support of such patient a specified sum per week in proportion to their financial ability. The administrator or manager

shall have power and authority to collect such sums from the estate of the patient or his relatives legally liable for his support in the manner provided by law for collection of expenses in the last illness of a deceased person. If the administrator or manager finds that such patient or said relatives are not able to pay either in whole or in part for his care and treatment in such hospital, same shall become a charge upon the hospital district as to the amount of the inability to pay. Should there be any dispute as to the ability to pay or doubt in the mind of the administrator or manager, the board of directors shall hear and determine same after calling witnesses, and shall make such order or orders as may be proper. Appeals from the final order of the board shall lie to the district court. The substantial evidence rule shall apply.

Sec. 19. The board of directors of the hospital district is authorized on behalf of such district to accept donations, gifts, and endowments for hospital purposes, to be held in trust and administered by the board of directors for such purposes and under such directions, limitations, and provisions as may be prescribed in writing by the donor not inconsistent with proper management and objective of the hospital district.

Sec. 20. After creation of the hospital district, no municipality or political subdivision within the boundaries of the district shall have the power to levy taxes or issue bonds or other obligations for hospital purposes for the area of the district or for providing medical care of the district's inhabitants. The district shall assume full responsibility for providing hospital care for the indigents residing within the district. As required by

the constitution, when the district is created and established, any county, towns, and cities located therein shall convey and transfer to the district title to all lands, buildings, improvements, and equipment in anywise pertaining to a hospital or hospital system which may be jointly or separately owned by the county or any city or town within said district. Operating funds and reserves for operating expenses which are on hand and funds which have been budgeted for hospital purposes by any county, city, or town therein for the remainder of the fiscal year in which the district is established shall likewise be transferred to the district, as shall taxes levied for hospital purposes for the current year and all sinking funds established for payment of indebtedness assumed by the district.

Sec. 21. The support and maintenance of the hospital district shall never become a charge against or obligation of the State of Texas. Unless specifically stated otherwise in this Act, the board of directors shall have any and all power and authority to do any and all things, which, in their opinion, are necessary for the good maintenance, operation, and welfare of the hospital district, its employees, patients, and property.

Sec. 22. In carrying out the purposes of this Act, the district will be performing an essential public function and any bonds issued by it and their transfer and the issuance therefrom, including any profits made in the sale thereof, shall at all times be free from taxation by the state or any municipality or political subdivision thereof.

Sec. 23. The legislature hereby recognizes there is some confusion as to the proper qualification of electors

in the light of recent court decisions. It is the intention of this Act to provide a procedure for the creation of the said hospital district and to allow such district, when created, to issue bonds payable from taxation, but that in each instance the authority shall be predicated upon the expression of the will of the majority of those who cast valid ballots at an election called for the purpose. Should the person or body calling an election determine that all qualified electors, including those who own taxable property which has been duly rendered for taxation, should be permitted to vote at an election, by reason of the aforesaid court decisions, nothing herein shall be construed as a limitation upon the power to call and hold an election, provided provision is made for the voting, tabulating, and counting of the ballots of the resident qualified property taxpaying electors who own taxable property which has been duly rendered for taxation separately from those who are qualified electors, and in any election so called a majority vote of the resident qualified property taxpaying voters who own taxable property which has been duly rendered for taxation and a majority vote of the qualified electors, including those who own taxable property which has been duly rendered for taxation, shall be required to sustain the proposition.

Sec. 24. Nothing in this Act shall be construed to violate any provision of the federal or state constitutions, and all acts done under this Act shall be in such manner as will conform thereto, whether expressly provided or not. Where any procedure hereunder may be held by any court to be violative of either of such constitutions, the district shall have the power by resolution to provide an alternative procedure conformable with such constitutions. If any provision of this Act should be invalid, such fact

shall not affect the authorization for the creation of the district or the validity of any other provisions of this Act, and the Legislature hereby declares that it would have created the district and enacted the valid provisions of this Act notwithstanding the invalidity of any other provision or provisions hereof.

Sec. 25. Proof of publication of the notice required in the enactment hereof under the provisions of Article IX, Section 9, of the Texas Constitution, as amended, has been made in the manner and form provided by law pertaining to the enactment of local and special laws, and such notice is hereby found and declared proper and sufficient to satisfy such requirement.

Sec. 26. The fact that there is urgent need to provide for the creation of the hospital district as authorized by Article IX, Section 9, of the Texas Constitution, as amended, creates an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this act take effect and be in force from and after its passage, and it is so enacted.

Passed the senate on May 3, 1973: Yeas 30, Nays 1; passed the house on May 21, 1973: Yeas 139, Nays 1, six present not voting.

Approved June 15, 1973.

Effective June 15, 1973.

ANSON HOSPITAL DISTRICT

CHAPTER 562[53]

S. B. NO. 449

An Act relating to the creation and organization of the Anson Hospital District of Jones County, Texas, under Article IX, Section 9, Constitution of Texas, as amended; prescribing a procedure for an election on the creation of such district and the levy of a tax for its maintenance, support and payment of indebtedness; providing that the district take over and assume the responsibilities and liabilities of any publicly owned hospital within the district; providing the rights, powers and duties of the district and its governing body and procedures for governing said district and administering, operating and financing the hospital system; providing procedures for the issuance of bonds, the characteristics of such bonds, and their eligibility for investments and security for deposit of public funds; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. Pursuant to the authority granted by the provisions of Article IX, Section 9, of the Texas Constitution, the Anson Hospital District, hereinafter referred to as district, is hereby authorized to be created

---

53. Vernon's Ann. Civ. St. art. 4494q note.

EXHIBIT F

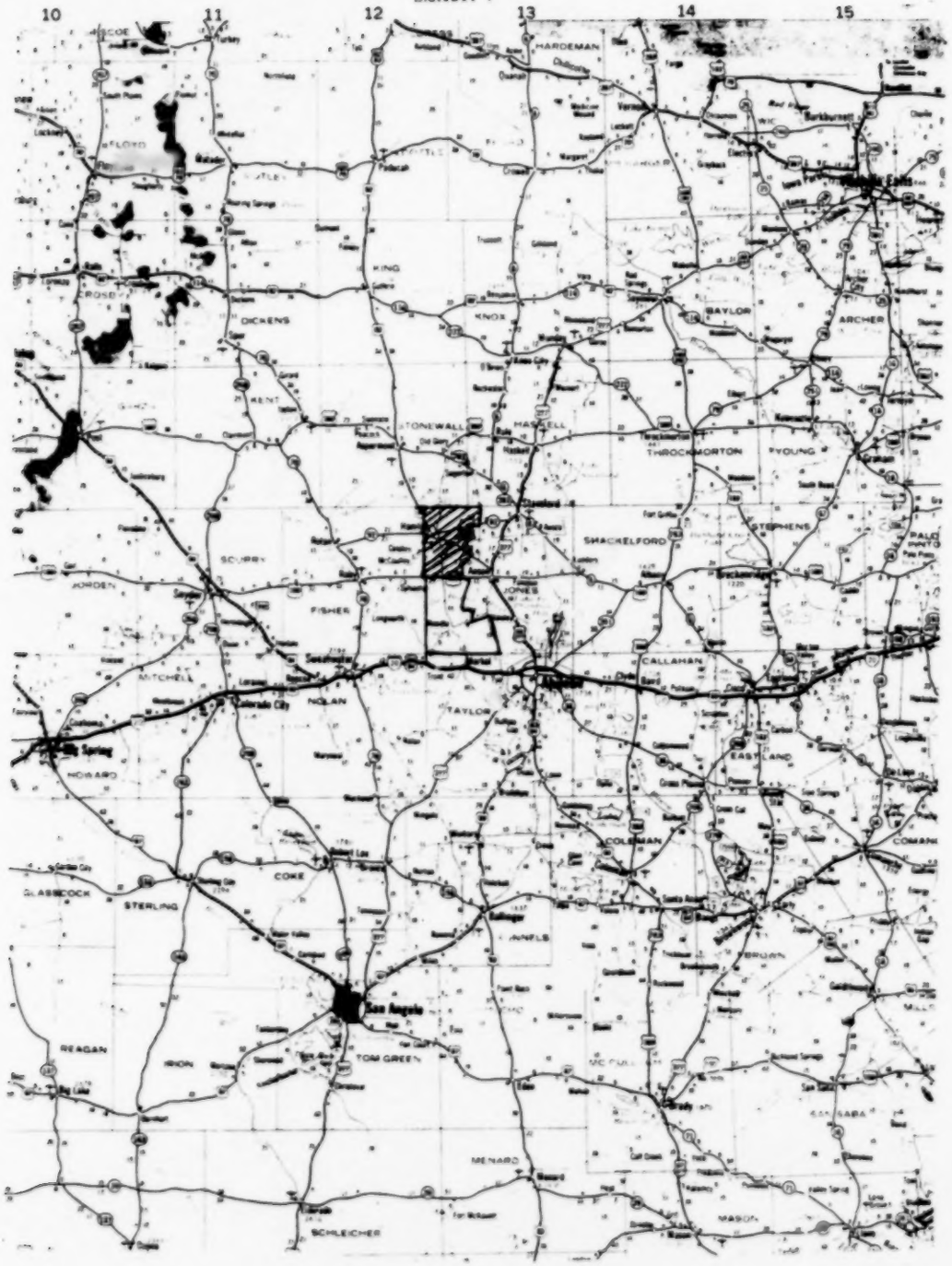
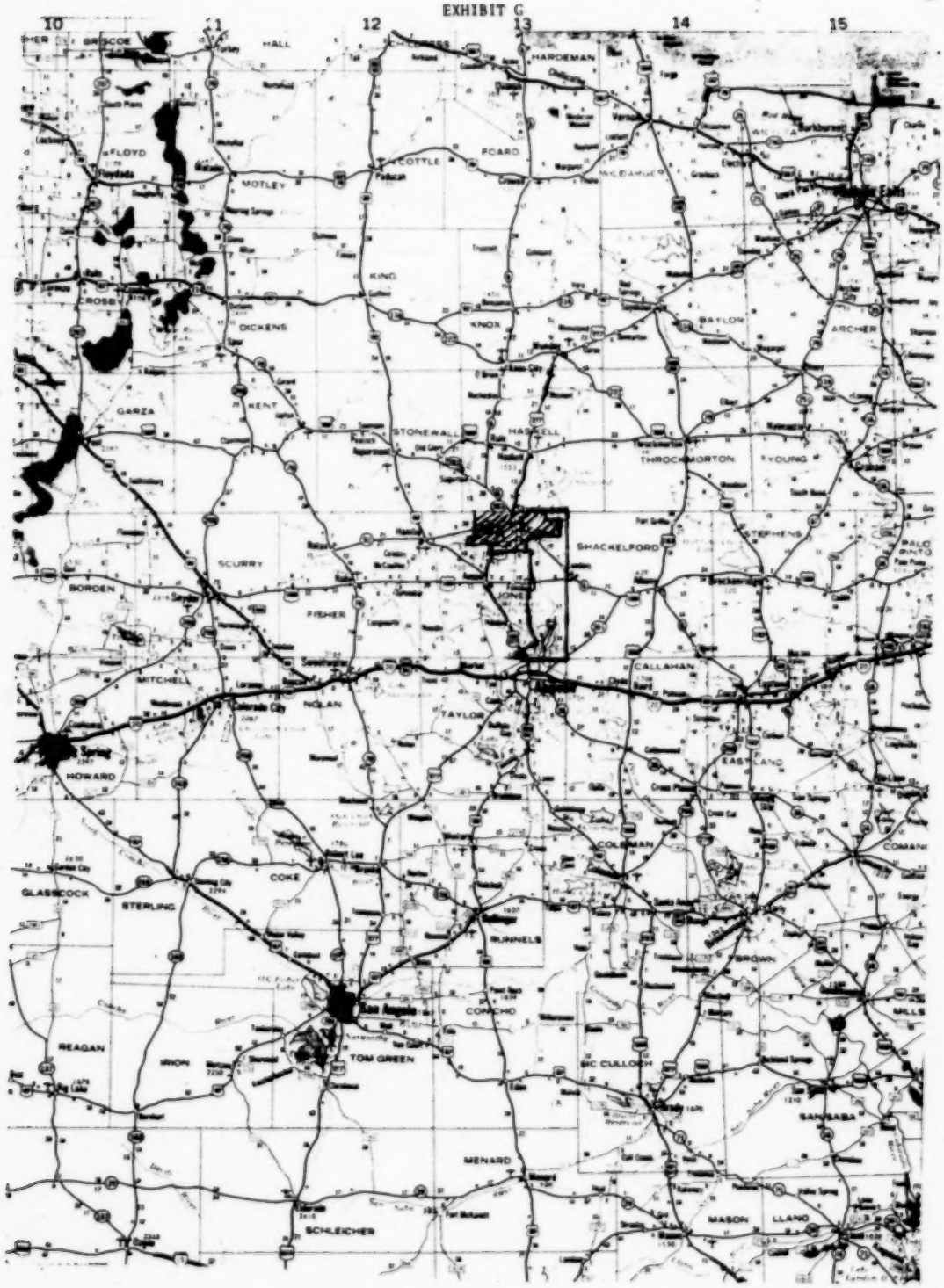

10
11
12
13
14
15
HARDEMAN
FLOYD
KING
DICKENS
KNOX
BAYLOR
ARCHER
KENT
STONEWALL
HASKELL
THROCKMORTON
YOUNG
SHACKELFORD
STEPHENS
SCURRY
JONES
FISHER
CALLAHAN
MITCHELL
NOLAN
TAYLOR
EASTLAND
HOWARD
COLEMAN
COMANCHE
COKE
GLASSCOCK
STERLING
RUNNELS
BROWN
San Angelo
REAGAN
IRION
TOM GREEN
CONCHO
MENARD
SCHLEICHER
MASON

EXHIBIT G


10
11
12
13
14
15
HALL
HARDEMAN
FLOYD
FOARD
COTTLE
MOTLEY
KING
CROSBY
DICKENS
KNOX
BAYLOR
ARCHER
GARZA
KENT
STONEWALL
HASKELL
THROCKMORTON
YOUNG
SHACKELFORD
STEPHENS
SCURRY
BORDEN
FISHER
JONES
CALLAHAN
MITCHELL
NOLAN
TAYLOR
HOWARD
COLEMAN
COKE
GLASSCOCK
STERLING
RUNNELS
BROWN
COMANCHE
REAGAN
IRION
TOM GREEN
MCCULLOCH
SAN SABA
MENARD
MASON
LLANO
SCHLEICHER

Supreme Court, U.S.
FILED
MAR 28 1977
MICHAEL RODAK, JR., CLERK

In the

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1232

C. E. CARTER, ET AL,

Petitioners,

v.

HAMLIN HOSPITAL DISTRICT, ET AL,

Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

JOHN S. WATTS
Drawer O
Hamlin, Texas 79520

MIKE A. HATCHELL
P.O. Box 629
Tyler, Texas 75710

Attorneys for Respondents.

SUBJECT INDEX

Page

List of Authorities ii

Rejoinder to Petitioners' Statement of the Case 2

Reasons Why the Petition Should Not Be Granted:

I. The inclusion of territory within the boundaries of a political subdivision, as a general rule, is not a proper subject for judicial scrutiny 3

II. An assessment of taxes disproportionate to the amount of benefits to be received from a political subdivision does not raise a substantial federal question 6

III. Even if it presented reviewable constitutional issues, petitioners' case is not supported by the facts 9

Conclusion 10

Certificate of Service 11

Page

Deane Hill Country Club, Inc. v. City of Knoxville, 379 F. 2d 321, 324-325 (6th Cir. 1967), cert. den. 389 U.S. 975 5

Detroit Edison Co. v. East China Township School Dist. No. 3, 247 F. Supp., 296, 299-302 (D. C. Mich. 1965), aff'd 378 F. 2d 225, 229 cert. den. 389 U.S. 932 ..... 5, 9

Gomillion v. Lightfoot, 81 S. Ct. 125, 364 U.S. 339, 5 L. Ed. 2d 110 (1960) 5, 6

Hamlands v. City of Corpus Christi, 226 F. Supp. 456, 458-459 (D.C. Tex. 1964), aff'd 343 F. 2d 162, cert. den. 382 U.S. 837 6

Hunter v. City of Pittsburg, 28 S. Ct. 40, 207 U.S. 161, 52 L. Ed. 151 (1907) 4, 5, 9

Illinois Central Railroad Co. v. City of Decatur, 13 S. Ct. 293, 147 U.S. 190, 37 L. Ed. 132 (1893) 7

International Harvester Co. v. Kansas City, 308 F. 2d 35, 38 (10th Cir. 1962), cert. den. 371 U.S. 948 6

Kelly v. Pittsburg, 104 U.S. 78, 26 L. Ed. 658 (1881) 8, 9

Mobil Oil Corp. v. Local Boundary Commission, 518 P. 2d 92 (Alaska Sup. 1974) 9

Myles Salt Co. v. Board of Commissioners, 36 S. Ct. 204, 239 U.S. 478, 60 L. Ed. 392 (1916) 8

State v. Texas City, 157 Tex. 450, 303 S.W. 2d 780, 783 (1957), cert. den. 355 U.S. 603 9

Union Refrigerator Transit Co. v. Kentucky, 26 S. Ct. 36, 199 U.S. 194, 50 L. Ed. 150 (1905) 7

In the

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1232

C. E. CARTER, ET AL,

Petitioners,

v.

HAMLIN HOSPITAL DISTRICT, ET AL,

Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

To the Honorable Supreme Court of the United States:

Come now the Hamlin Hospital District, and its board of directors, as respondents, and respectfully file the following in opposition to the petition for writ of certiorari herein.

REJOINDER TO PETITIONERS' STATEMENT OF THE CASE

The "Statement of the Case", and other factual statements, in the petition are generally correct except that:

(1) It is inaccurate for petitioners to state that:

> " *** It is undisputed that Petitioners did not need or could not reasonably have expected to use the hospital facilities to be provided by the said Hospital District." (Petition 4.)

In their proof, petitioners demonstrated only that they customarily used hospital facilities outside the boundaries of the district. They did not prove a total lack of need for hospital services *per se*. In truth and in fact, the bill which created the Hamlin Hospital District does not limit the hospital facilities to be maintained or the services to be provided by the district to any particular locale or situs within the district, nor does it limit the number of hospitals or the kind of authorized services. It may be, therefore, that, pursuant to the general powers conferred by §§2, 10 and 20 of the Act creating it, the district will eventually establish hospital facilities which are vastly more convenient to petitioners or will instigate services and programs which petitioners could not obtain anywhere else. Petitioners' lack of need for, or use of, services to be provided by the district, thus, at least on *this* record, is hardly the foregone conclusion petitioners state it to be.

(2) It is equally inaccurate for petitioners to state, as a fact, that:

> " *** This long, snake-like district was arbitrarily created for the purpose of subjecting the property of Petitioners to taxation to build a hospital for other people. ***" (Petition 6.)

Not a whit of evidence was introduced to prove that petitioners were included in this hospital district only

for the purpose of subjecting their property to taxation for the district's support, and neither the jury nor the trial court made a finding to that effect. The quoted statement is, therefore, not a fact but merely a self-serving assertion on the petitioners part which is wholly unfounded in the evidence.

(3) Though of fleeting consequence, a final inaccuracy is found in petitioners' attempt, by the statement quoted below, to make it appear that creation of the district devolved, like a bolt from the blue, without petitioners having been afforded the opportunity of input into the legislative decision-making process:

> "Petitioners not only did not have any voice in the political manuevering in the passage of said legislative act, but also do not have any effective voice in the creation and operation of said hospital district. ***" (Petition 10.)

In actuality, as the testimony of petitioners' own witness reveals, a taxpayers association was formed within the area; it raised money and openly lobbeyed before the Texas legislature for the same position now espoused in this court. (See II S.F. 92-94.)

REASONS WHY THE PETITION SHOULD NOT BE GRANTED

I.

The inclusion of territory within the boundaries of a political subdivision, as a general rule, is not a proper subject for judicial scrutiny.

Simply stated, petitioners complain of the inclusion of their land within the confines of a lawful and duly created political subdivision.

The creation, implementation, and definition of the political subdivision of a sovereignty is deemed by the courts to be a political, as opposed to a judicial, matter which rests within the exclusive domain of the sovereignty's lawmaking authority. The most conspicuous judicial repository for this principle is oft-cited *Hunter v. City of Pittsburg*, 28 S. Ct. 40, 207 U.S. 161, 52 L. Ed. 151 (1907), which explains the philosophical basis for the principle in these terms:

> " *** Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the state within the meaning of the Federal Constitution. *** In all these respects the state is supreme, and its legislative body, conforming its action to the state Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may, by such changes, suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right, by contract or otherwise, in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The

> power is in the state, and those who legislate for the state are alone responsible for any unjust or oppressive exercise of it." (207 U.S. 178-9, 52 L. Ed. 159.)

The steadfastness with which this principle has been adhered to over the years is evidenced by this contemporary expression in *Gomillion v. Lightfoot*, 81 S. Ct. 125, 364 U.S. 339, 5 L. Ed. 2d 110 (1960):

> "When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review." (364 U.S. 347, 5 L. Ed. 2d 117.)

A natural and logical concomitant to the *Hunter* doctrine, aposite to this case, is that the definition of a political subdivision's territorial limits, and the procedures whereby those limits are determined, are matters which concern state interest and are insulated from judicial regulation via constitutional challenge. Indeed, *Hunter* spoke to this very problem of definition of boundaries when it held:

> " *** Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be entrusted to them. *** The state, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. ***" (207 U.S. 178-179, 52 L. Ed. 159.)

To the same effect, see: *Deane Hill Country Club, Inc. v. City of Knoxville*, 379 F. 2d 321, 324-325 (6th Cir. 1967), cert. den. 389 U.S. 975; *Detroit Edison Co. v. East China Township School Dist. No. 3*, 247 F. Supp.

296, 299-302 (D.C. Mich. 1965), aff'd 378 F. 2d 225, 229, cert. den. 389 U.S. 932; *International Harvester Co. v. Kansas City*, 308 F. 2d 35, 38 (10th Cir. 1962), cert. den. 371 U.S. 948; *Hammonds v. City of Corpus Christi*, 226 F. Supp. 456, 458-459 (D.C. Tex. 1964), aff'd 343 F. 2d 162, cert. den. 382 U.S. 837.

Inasmuch as the state action called into question here is the definition of the territory within a political subdivision, it is clearly within the ambit of those authorities and their prohibition against judicial review.

II.

An assessment of taxes disproportionate to the amount of benefits to be received from a political subdivision does not raise a substantial federal question.

It is true, of course, that state action loses protection of the political mantle when, and if, it is exercised in the creation and definition of political subdivisions for the express purpose of infringing a constitutionally protected right — as, for example, drawing municipal boundary lines for the avowed purpose of disenfranchising minority citizens, e.g., *Gomillion v. Lightfoot*, supra, 81 S. Ct. 125, 364 U.S. 339, 5 L. Ed. 2d 110 (1960). But, that is decidedly *not* the effect or purpose of the subdivision at hand, nor does petitioners' complaint raise an issue in that category.

As we understand petitioners' complaint, it is that the inclusion of their property within the bounds of the Hamlin Hospital District is unconstitutional, as to them, since the taxes they must bear to support the district will be disproportionate to their need for, or use of, hospital services to be provided by the district.

Disregarding for the moment whether that contention is supported by evidence, it seems to us a perfect

answer to the argument to say that correlation between taxes paid for the support of a political subdivision and benefits received therefrom has never been deemed a constitutional prerequisite to validity of such a subdivision. As to what a subdivision citizen may expect in return for his taxes, this court noted early on, in *Illinois Central Railroad Co. v. City of Decatur*, 13 S. Ct. 293, 147 U.S. 190, 37 L. Ed. 132 (1893), that:

> "*** *** The general levy of taxes is understood to exact contributions in return for the general benefits of government, and it promises nothing to the persons taxed beyond what may be anticipated from an administration of the laws for individual protection and the general public good. ***' ***" (147 U.S. 198-199, 37 L. Ed. 135.)

As a consequence, it is generally recognized that the failure of a political subdivision, created for the public good, to confer, either equally or substantially, upon its inhabitants benefits equivalent to taxes exacted for its support is not a constitutional issue either of due process or of equal protection. The reason for this is explained in *Union Refrigerator Transit Co. v. Kentucky*, 26 S. Ct. 36, 199 U.S. 194, 50 L. Ed. 150 (1905), in these terms:

> "But notwithstanding the rule of uniformity lying at the basis of every just system of taxation, there are doubtless many individual cases where the weight of a tax falls unequally upon the owners of the property taxed. This is almost unavoidable under every system of direct taxation. But the tax is not rendered illegal by such discrimination. Thus, every citizen is bound to pay his proportion of a school tax, though he have no children; of a police tax, though he have no buildings or personal property to be guarded; or of a road tax, though he never use the road. In other words, a general tax cannot be dissected to show that, as to certain constituent parts, the taxpayer receives no benefit. *** " (189 U.S. 204, 50 L. Ed. 153.)

See also: *Kelly v. Pittsburg*, 104 U.S. 78, 26 L. Ed. 658 (1881).

Petitioners' benefit disparity theory is, thus, one which has been raised before and has never found favor with this, or any other, court; it is, in short, an insufficient basis for challenging the constitutionality of the Hamlin Hospital District.

The decision in *Myles Salt Co. v. Board of Commissioners*, 36 S. Ct. 204, 239 U.S. 478, 60 L. Ed. 392 (1916) — which is the principal, if not the only, authority cited for petitioners' position — does not command a different rule or result. There, the political subdivision was not, as is the Hamlin Hospital District, created to provide for the general well-being of its inhabitants. Rather, it was created for the special purpose of benefiting lands within the subdivision, and particular lands at that. This court itself underlined that distinction by emphasizing in the opinion that:

> "It is to be remembered that a drainage district has the *special purpose* of the improvement of *particular property*. ***" (239 U.S. 485, 60 L. Ed. 396, emphasis added.)

Thus, while the *Myles* requirement, that a "*** special purpose ***" subdivision confer at least some benefit upon property it proposes to tax, may be said to constitute an exception to the *Hunter* doctrine, that is of little consequence to this case. The Hamlin Hospital District is not the kind of subdivision envisioned by the *Myles* exception. It is, instead, a district created in furtherance of the state's duty to provide for the *general* welfare of its citizens, and its purpose is not to benefit particular *property*, but to provide services for *people* on an indiscriminate basis. It is the latter type of political subdivision, of which the Hamlin

Hospital District is one, to which the *Hunter* doctrine applies with full force.* Petitioners' benefit theory has no more validity, then, when interposed against the kind of subdivision involved here than does the contention for example, that inclusion of land within corporate limits is unconstitutional because the landholder does not intend to use city services, or a contention that inclusion of land in a school district is unconstitutional because the owner has no school-aged children. Cf. *Kelly v. Pittsburg*, supra, at 104 U.S. 82, 26 L. Ed. 658; *Detroit Edison Co. v. East China Township School Dist. No. 3*, supra, at 303-304.

It is seen, therefore, that the principal philosophical underpinning of petitioners' case does not raise a viable constitutional issue.

III.

Even if it presented reviewable constitutional issues, petitioners' case is not supported by the facts.

Even if one were to assume what the foregoing cases so clearly establish to the contrary, i.e., that the constitution guarantees petitioners will receive substantial benefit from the hospital district in return for their taxes, we submit that they failed to prove the essential factual premise upon which their position rests.

Taken at face value, petitioners' evidence proves only that " *** a majority *** " (II S.F. 42, 75, 78, 80, 122,

---

* Courts which have been called upon to interpret *Myles* from the same standpoint are in accord with this interpretation. See *Mobil Oil Corp. v. Local Boundary Commission*, 518 P. 2d 92, 101 (Alaska Sup. 1974); *State v. Texas City*, 157 Tex. 450, 303 S.W. 2d 780, 783 (1957), cert. den. 355 U.S. 603.

125, 159) of inhabitants residing below Highway No. 180, in the southern part of the district, traditionally use hospital facilities now located in towns outside the district. Little is said about the "quality" of hospital facilities in those other towns, and the extra distance in terms of miles between the homes of these southern inhabitants to facilities presently operated in the district and those they now use is comparatively slight, if they are not, in fact, closer in some instances. (See II S.F. 189-190, 205, 208, 219-220.)

The reason for the complainants' usage of outside facilities is, thus, the product of nothing more than long-standing custom or habit. Moreover, as mentioned already, there is nothing in the Act creating the Hamlin Hospital District which prevents the district from establishing hospital facilities which are more convenient in terms of access to these inhabitants and/or which will offer vastly greater services than they can obtain elsewhere in the vicinity. For that reason, petitioners are ill put to contend on *this* record, that they will *never* derive any benefit from the district. The likelihood that they will receive such benefit is certainly not disproved, and logic surely dictates a presumption to that effect.

Thus, if petitioners survive the insurmountable legal difficulties facing them, their position is not improved because, from a factual standpoint, they have failed to establish the main premise of their position.

CONCLUSION

For the reasons stated, therefore, it is submitted that the petition for writ of certiorari does not raise a substantial federal question and demonstrates no right to relief.

WHEREFORE, PREMISES CONSIDERED, respondents pray that the petition for writ of certiorari herein be denied.

Respectfully submitted,

JOHN S. WATTS
P. O. Drawer O
Hamlin, Texas 79520

By: John S. Watts

MIKE A. HATCHELL
P. O. Box 629
Tyler, Texas 75710

By: Mike A. Hatchell
Attorneys for respondents.

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing brief in opposition has been served upon counsel for petitioners, Mr. James R. Black, and Mrs. Beverly Tarpley, P. O. Box 356, Abilene, Texas 79604, by placing the same in the United States Mail, properly addressed and postage prepaid on this the 24th day of March, 1977.

Mike A. Hatchell